

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., FOR A CABLE)
TELEVISION FRANCHISE TO SERVE THE) PSC DOCKET NO. 06-40
UNINCORPORATED AREAS OF THE STATE)
OF DELAWARE (FILED JANUARY 23, 2006))

IN THE MATTER OF THE NOTICE BY)
VERIZON DELAWARE INC., OF ITS)
INTENT TO PROVIDE VIDEO SERVICES) PSC DOCKET NO. 05-389
IN THE UNINCORPORATED AREAS OF)
THE STATE OF DELAWARE)
(OPENED NOVEMBER 8, 2005))

ORDER NO. 6858

This 14th day of March, 2006, the Commission determines and Orders the following:

1. In 2005, Verizon Delaware Inc. ("VZ-DE") informed the Commission that it plans to offer video services over its "FiOS" fiber optic network that it is now constructing in this State. Based on VZ-DE's notice (and at its request), the Commission (under 26 Del. C. § 602) solicited entities (including obviously VZ-DE) to submit applications for a cable television franchise to serve throughout the State. See PSC Order No. 6763 (Nov. 8, 2005).¹

¹In this earlier Order, the Commission alluded to the potential problems in applying the present state Cable Franchising law, enacted in 1974, to current video service conditions. For example, in many instances the procedures crafted in the state Cable Act seemingly presume a regime based on entities competing for the award of an exclusive franchise to serve a particular area. However, even before Congress spoke to exclusive cable franchises in 47 U.S.C. § 541(a)(1), this Commission had moved away from exclusivity. Yet, it still remains difficult to shoehorn the 1974-crafted procedures into the current reality of competition for customers among the various providers of video services.

2. On January 23, 2006, VZ-DE filed its application for a cable television franchise to provide cable services in the unincorporated areas of this State with its service to begin in several initial service areas. By this Order, the Commission will now set VZ-DE's application for a public hearing, as prescribed by 26 Del. C. § 603(a). At such hearing, members of the public, VZ-DE, the Public Advocate, and the Commission Staff can be heard on the award of a franchise to VZ-DE (as well as the contents of the required franchise document). Specifically, the Commission solicits VZ-DE and others to speak to the criteria for granting a franchise set forth in 26 Del. C. § 603(b), as well as the federal command that the Commission, as a franchising authority, not unreasonably refuse to award an additional competitive franchise. 47 U.S.C. § 541(a)(1).

3. The provisions of § 603(b) call for the Commission, in making its decision to award a franchise, to look to the submitted application as well as the presentations made at the "public hearings [sic]" by the applicant, members of the public, and Staff. However, in this context and in order to allow the Commission to better digest any information that might be proffered, the Commission encourages VZ-DE (the applicant) and other members of the public to "pre-file" their views by means of written comments, data, or briefs submitted *prior to the onset of the actual scheduled hearing*. Such written submissions can then be made part of the "record" at the public hearing. The filing of written submissions, by the date set forth in the Ordering paragraphs, will allow the Commission to better focus at the time of the hearing on the relevant "issues" that might surface.

4. In addition, § 603(b) prescribes that “[a]fter such hearing, the Commission may grant a franchise which shall state in writing its terms as specified in § 604.” The same subsection then goes on to say that if those franchise terms differ from those set forth in the successful application, the applicant must have consented to the additional terms.² Looking to these two provisions in § 603(b), VZ-DE suggests that after the public hearing the Commission grant it a “conditional cable franchise.” Then, VZ-DE says, its representatives and the Commission can negotiate the terms of the actual franchise document. According to VZ-DE, its franchise “would only become effective after the execution of a franchise agreement consented to by Verizon Delaware.”³ In a letter to the Commission, the Cable Telecommunications Association of Maryland, Delaware, and the District of Columbia (“Cable Association”) objects to any notion of a “conditional cable franchise” that would allow VZ-DE to provide its video services prior to the consummation, and the Commission acceptance, of a formal franchise document.⁴ The Commission is not entirely convinced that VZ-DE seeks what the Cable Association opposes; after all, VZ-DE’s application suggests that “the franchise” will become “effective” only after the execution of the franchise

²The quirk in the state statutory scheme is that under § 602(13), the applicant has the option whether to include in its application its proposal for the “precise statement of each term of the franchise as specified in § 604.”

³Cover letter of B. Metz, Esq., Counsel for VZ-DE (Jan. 20, 2006).

⁴Letter of J. Conwell, Esq., Counsel for the Cable Telecommunications Association of Maryland, Delaware, and the District of Columbia (Feb. 22, 2006).

agreement.⁵ In order to clarify VZ-DE's proposal, the Commission will direct VZ-DE to file with the Commission, within 10 days, a written explanation of its view of a "conditional cable franchise" and what entitlements flow from an award of such "conditional" instrument.

5. At the same time, this tangle over the conditional franchise issue does raise a broader question: what degree of public review (or public input) should surround the actual franchise document that sets out - in some detail - the governing terms for VZ-DE's cable system and operations. If, as VZ-DE proposes, the terms of the actual document are to be "negotiated" after the public hearing, should there be an opportunity for public comment on the final document? In particular, is such a second round needed if it might be determined that VZ-DE's application does not contain all the specifics that might be called for by state or, more significantly, federal cable laws? The thirty-year old State cable law does contain a list of mostly straight-forward provisions that have to be included in the franchise document. And one could argue that those listed terms are to be the "only" terms in the document, unless the applicant consents to additions.⁶ But even under the statutory terms, there is room where decisions of all degrees might have to be made. See e.g., 26 Del. C.

⁵See 47 U.S.C. § 541(b)(1) (cable services cannot be offered without a franchise).

⁶In addition, since 1984, the federal Cable Act has allowed local franchising authorities to impose particular obligations on cable system operators. Thus, for example, while § 604 says nothing explicitly about "Public, Educational, and Governmental" channel allocations (see 47 U.S.C. §§ 531(a), (b); 541(a)(4)(B)), the Commission historically has expected cable operators to include franchise terms related to their provision of PEG programming access and services.

§ 604(5) (Commission to determine insurance amount); § 604(3) (in the case of an uncompleted system, the franchise must contain terms "fixing the dates for the several reasonable phases whereby construction and service will be extended when and to the extent required by the Federal Communications Commission to the entire franchised area").⁷ Moreover, in the slightly different context of granting "negotiated" franchise renewals, the Commission's practice has generally been to provide public notice of its intent to agree to a particular franchise document and to allow for public comment on the tendered agreement's terms. See PSC Orders Nos. 6740, 6741, 6742 & 6743 (all Oct. 11, 2005). Cf. 47 U.S.C. § 546(h) (in negotiated franchise renewal process, local franchising authority can review or accept cable system's proposal "after affording the public adequate notice and opportunity for comment"). Consequently, the Commission now also solicits comments about what opportunity for public input (if any) must, can, or should surround the Commission's review of the actual final franchise document that might govern VZ-DE's actual services. VZ-DE and all interested persons in the public should stand ready to speak to such issue at the scheduled public hearing. In addition, the Commission encourages VZ-DE and other interested persons to include their views on such question in the pre-filed written comments allowed under paragraph 3 above.

⁷(emphasis added). Cf. 47 U.S.C. § 541(a)(4)(A) (a franchising authority must allow cable operator a reasonable period of time to become capable of providing cable services to all households in the franchise area). The Commission notes that in the past it has often looked to "line extension" policies, included in, or referenced, in the franchise agreement, to define the obligation of the cable operator to expand its system within its franchise area.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 603, the application for a cable television franchise filed by Verizon Delaware Inc. on January 23, 2006, is hereby set for a public hearing to be held, before the Commission, during its regularly scheduled meeting, on Tuesday, April 11, 2006. At such hearing, the Commission will hear from the applicant, any member of the public, the Public Advocate, and the Commission Staff.

2. That, for the reasons set forth in paragraph 3 of the body of this Order, the Commission allows, and encourages, Verizon Delaware Inc., the Public Advocate, and any member of the public to submit pre-filed written comments prior to the date of the hearing under Ordering paragraph 1. The pre-filing of such comments will not preclude the applicant, the Public Advocate, or any member of the public from also being further heard at the public hearing. Such pre-filed comments shall be filed with the Commission on or before Monday, April 3, 2006.

3. That Verizon Delaware Inc. shall cause the notice attached here to as Exhibit "A" to be published in the following newspapers in two-column format, outlined in black, on the below designated dates:

The News Journal (March 17, 2006)

Delaware State News (March 18, 2006)

In addition, the Secretary shall send, by United States mail, a copy of such notice to the Division of the Public Advocate and every cable system operator currently franchised by this Commission. Such notice shall be sent on or before March 18, 2006. Verizon Delaware Inc. shall file proof of the publication of notice on or before March 31,

2006. The Secretary shall certify mailing of the notices on or before March 31, 2006.

4. That Hearing Examiner Ruth A. Price is delegated the authority to set further procedural directives in this matter to enable the Commission to conduct an open, fair, and efficient hearing. Hearing Examiner Price is also delegated the authority to resolve, and determine, any procedural disputes arising before the date of the scheduled hearing.

5. That, on or before March 24, 2006, Verizon Delaware Inc. shall file with the Commission a written document explaining its view of the term "conditional cable franchise" as referred to in its application. The purpose and content of such document is more fully set forth in paragraph 4 of the body of this Order. Verizon Delaware Inc. shall also send a copy of such document to the Cable Telecommunications Association of Maryland, Delaware, and the District of Columbia on the same date that it is filed with the Commission.

6. That, as explained more fully in paragraph 5 of the body of this Order, the Commission solicits from Verizon Delaware Inc., the Public Advocate, and any other members of the public views about what public notice and public comment or review process (if any) must, or should, surround any final franchise document offered by Verizon Delaware Inc. to govern its cable system and services. The Commission encourages Verizon Delaware Inc. and others to include such views in pre-filed comments permitted under Ordering paragraph 2.

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

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VERIZON DELAWARE INC., FOR A CABLE)
TELEVISION FRANCHISE TO SERVE THE) PSC DOCKET NO. 06-40
UNINCORPORATED AREAS OF THE STATE)
OF DELAWARE (FILED JANUARY 23, 2006))

NOTICE OF PUBLIC HEARING ON THE
APPLICATION OF VERIZON DELAWARE INC.
FOR A CABLE TELEVISION FRANCHISE

The Public Service Commission ("PSC") grants franchises for cable television systems and services in the unincorporated areas of Delaware. On January 23, 2006, Verizon Delaware Inc. ("VZ-DE") filed an application with the PSC seeking a cable television franchise to provide video services in the unincorporated areas in the State. VZ-DE's application describes its initial service area as areas served by its Angola, Dover, Hockessin, Holly Oak, Middletown, Newark, Talleyville, Penn Rose, and Wrangle Hill telephone wire centers.

Pursuant to 26 Del. C. § 603, the PSC will hold a public hearing on VZ-DE's application for a cable television franchise on Tuesday, April 11, 2006. The hearing will begin at 1:00 P.M. and be held at the PSC's Hearing Room at the address set out below. At such hearing, the PSC will hear presentations, comments, testimony, and data from VZ-DE, the Public Advocate, and any member of the public. Under 26 Del. C. § 603(b), the PSC is required to make its decision to grant a

franchise based on the application, the materials presented during the hearing, and after considering certain criteria.

If you wish to participate in this matter, or speak at such hearing, please notify the PSC of your desire to do so on or before April 4, 2006. You can give such notice by contacting the PSC by written filing or by an electronic Internet e-mail. Under PSC Order No. 6858 (Mar. 14, 2006), the Commission is allowing, and encouraging, VZ-DE and other persons to submit pre-filed written materials and data prior to the hearing. Such pre-filed materials should be filed with the PSC on or before April 3, 2006. A copy of such materials should also be sent to VZ-DE.

PSC Address

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Mailing Address for VZ-DE

Verizon Delaware Inc.
901 Tatnall Street
Second Floor
Wilmington, Delaware 19801

If you file such written submission you can still also speak at the hearing.

In PSC Order No. 6858, the PSC also specifically solicits comments from VZ-DE and any other person concerning what type of public notice and opportunity for public comment can, must, or should surround the PSC's approval of a final franchise document with VZ-DE. You should review Order No. 6858 to better understand the focus of these requested comments. The PSC encourages persons to submit their responses as part of pre-filed written comments.

PSC Order No. 6858 is available on the PSC's website located at www.state.de.us/delpsc. You can review VZ-DE's application at the Commission's Dover office during normal business hours. If you are

disabled and need assistance to review the materials or participate in this matter, contact the PSC to arrange for such assistance. If you have questions, please contact the PSC at 1-800-282-8574 (in Delaware only) or at (302) 739-4247 (text telephone available). You can also make inquiries by Internet e-mail addressed to constance.welde@state.de.us.